

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF SOUTH CAROLINA

IN RE:

Tracey Ann Linke,

Debtor(s).

CHAPTER 13
CASE NO: 09-04417-B

NOTICE OF MOTION SEEKING
11 U.S.C. §362(d) RELIEF

306735-00383

TO: DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE, AND THOSE NAMED IN THE ATTACHED MOTION

PLEASE TAKE NOTICE THAT ON **February 11, 2010 at 11:00AM** at the Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, SC, a hearing will be held on the attached Motion.

Within fourteen (14) days after service of the attached Motion, and the Notice of Motion, the Movant's Certification of Facts, (and a blank Certification of Facts form, applicable only to motions for relief from the automatic stay and for service on *pro se* parties only), any party objecting to the relief sought shall:

- 1) File with the Clerk of this Court a written objection to the 11 U.S.C § 362 Motion;
- 2) File with the Clerk of this Court a Certification of Facts (for motions for relief from the automatic stay;
- 3) Serve on the movant items 1 & 2 above at the address shown below; and
- 4) File a certificate of such service with the Court.

If you fail to comply with this procedure, you may be denied the opportunity to appear and be heard on this proceeding before the Court.

DATE OF ISSUANCE: January 19, 2010

MOVANT: EverHome Mortgage Company

ATTORNEY: Samuel C. Waters, ID #4539
Cheryl H. Fisher, ID #7451
Reginald P. Corley, ID #7832
Jennifer W. Rubin, ID #7540
Mary R. Powers (I.D. 9121)
William S. Koehler (I.D. 9912)

ATTORNEY'S ADDRESS: P.O. Box 100200
Columbia, SC 29202
(803) 744-4444

TO: PARTY FILING MOTION FOR RELIEF FROM AUTOMATIC STAY (11 U.S.C. §362)

Please refer to Federal Rules of Bankruptcy Procedure 4001(a) for specifics of your responsibilities for service and filing of documents, including the above notice of hearing, related to your motion for relief from the automatic stay (11 U.S.C. §362).

Please note that Local Rule 4001 provides for any party failing to comply with the procedures specified in the rule to be denied the opportunity to appear and be heard before the court and to the subject to sanctions pursuant to Local Rule 9011.

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MOTION TO MODIFY STAY

306735-00383

EverHome Mortgage Company ("Movant") moves the Court pursuant to 11 U.S.C. 362(d) for relief from the automatic stay provided by 362(a) of the United States Bankruptcy Code and represents as follows:

1. Debtor filed a Petition for Relief under Chapter 13 of the United States Bankruptcy Code on June 15, 2009.
2. The Trustee of the Debtor's estate may claim an interest in the property which is the subject of this action.
3. Post-petition payments have not been made pursuant to the terms of the note, mortgage and chapter 13 plan, resulting in a total post-petition amount due of \$3,057.54 as of January 19, 2010. This delinquency results in debtor's being due for the December 1, 2009 payment forward.
4. Movant has a valid security interest in the property described in that certain mortgage dated January 3, 2003 and recorded January 15, 2003, in the office of the RMC/ROD for Greenville County in Book 3833 at Page 155 in the original principal sum of \$179,000.00. A copy of the Debtor's note and mortgage are attached.
5. That the interest of Movant with respect to the mortgaged premises continues to worsen and is not adequately protected while a large indebtedness remains upon this account.
6. That according to the Note and Mortgage, Movant's attorney is entitled to a reasonable fee and reimbursement of costs for the prosecution of this action.
7. The Movant agrees to waive any claim that may arise under 11 U.S.C. Section 503(b) or Section 507(b) as a result of this Motion. The Movant further agrees that any funds realized from the foreclosure sale, in excess of all liens, costs, and expenses, will be paid to the trustee.

8. That FRBP 4001 (a)(3) should not apply under these circumstances.

9. The Movant agrees to waive any claim that may arise under 11 U.S.C. Section 503(b) or Section 507(b) as a result of this Motion. The Movant further agrees that any funds realized from the foreclosure sale, in excess of all liens, costs, and expenses, will be paid to the trustee.

WHEREFORE, Movant prays that:

1. The stay pursuant to 11 U.S.C. 362(d) be modified to permit Movant to pursue any state court remedies under its mortgage on the above-mentioned property, including sending any required notice;

2. The Court order that FRBP 4001 (a)(3) does not apply to the relief requested by the Movant;

3. The attorney's fees and costs in the amount of \$800.00 or such additional amounts as the Court finds reasonable be granted; and

4. The Court orders such other relief as may be just and proper.

/s/ William S. Koehler

Samuel C. Waters (I.D. 4539)

Cheryl H. Fisher (I.D. 7451)

Reginald P. Corley (I.D. 7832)

Jennifer W. Rubin (I.D. 7540)

Mary R. Powers (I.D. 9121)

William S. Koehler (I.D. 9912)

Attorneys for Movant

Rogers Townsend & Thomas, PC

220 Executive Center Drive, Suite 109 (29210)

Post Office Box 100200

Columbia, South Carolina 29202

(803) 744-4444

Columbia, South Carolina
January 19, 2010

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CERTIFICATION OF FACTS

306735-00383

In the above-entitled proceeding, in which relief is sought by EverHome Mortgage Company from the automatic stay in accordance with 11 U.S.C Section 362, I do hereby certify to the best of my knowledge the following:

1. Nature of Movant's Interest:
Secured – 1st Mortgage.
2. Brief Description of Security Interest, copy attached (if applicable):
Note and Mortgage.
3. Description of Property Encumbered by Stay (Include serial number, lot and block number, etc.):
514 Devenger Road, Greer in Greenville County, South Carolina - TMS# 0540.07-01-017.00
4. Basis for Relief (property not necessary for reorganization, debtor has no equity, property not property of estate, etc.; include applicable subsection of Section 362):
11 U.S.C. §362(d)1
5. Prior Adjudication of Other Courts, copy attached, (Decree of foreclosure, Order of possession, Levy of execution, etc., if applicable):
N/A
6. Valuation of Property, copy of valuation attached (Appraisal, Blue Book, etc.):

Fair Market Value	\$250,000.00 - Movant reserves the right to provide an appraisal if needed.
Liens (Mortgages)	\$263,877.44 (Movant's payoff as of 1/9/10)
Other:	
Debtor Exemption (-)	\$-45,000.00
Net Equity	\$0.00
Source/Basis of Value	Debtor's Schedules
If Appraisal:	
Date of Appraisal	
Type of Appraisal	
Name of Appraiser	
Address of Appraiser	
7. Amount of debtor's estimated equity (using figures from paragraph 6, supra):
\$0.00
8. Month and Year in Which First Direct Post-petition Payment Came Due to Movant (if applicable):
Contractually due for June 2009 (Filed a Chapter 7 bky on 6/15/09)
9. (a) For Movant/Lienholder (if applicable): List or attach a list of all post-petition payments received directly from debtor(s), clearly showing date received, amount, and month and year for which each such payment was applied
See attached payment history

(b) For Objecting Party (if applicable): List or attach a list of all post-petition payments included in the Movant's list from (a) above which objecting party disputes as having been made. Attach written proof of such payment(s) or a statement as to why such proof is not available at the time of filing this objection.
10. Month and Year for Which Post-petition Account of Debtor(s) is Due as of the Date of this Motion:
December, 2009 (Converted to a Chapter 13 bky on 1/5/10)

/s/ William S. Koehler

Samuel C. Waters, ID #4539
Cheryl H. Fisher, ID #7451
Reginald P. Corley, ID #7832
Jennifer W. Rubin, ID #7540
Mary R. Powers (I.D. 9121)
William S. Koehler (I.D. 9912)
Attorney for Movant
Post Office Box 100200
Columbia, SC 29202-3200
(803) 744-4444

Dated: January 19, 2010

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CERTIFICATE OF SERVICE

I, the undersigned employee of ROGERS TOWNSEND & THOMAS, PC, do hereby certify that a copy of the Notice of Motion Seeking Relief, Notice of Motion/Application and Opportunity for Hearing, Motion to Modify Stay, Motion to Modify Stay as to Co-Debtor and Certification of Facts were mailed to the parties listed below:

Tracey Ann Linke
514 Devenger Road
Greer, SC 29650

Dana Elizabeth Wilkinson, Esquire (via electronic service)
365-C East Blackstock Road
Spartanburg, SC 29301

Gretchen D. Holland (via electronic service)
Chapter 13 Trustee
301 N. Main Street, Suite 1904
Greenville, SC 29601

Angela N. Linke
514 Devenger Road
Greer, SC 29650

/s/ Kendra S. Macon

ROGERS TOWNSEND & THOMAS, PC
Kendra S. Macon, Bankruptcy Paralegal
Post Office Box 100200
Columbia, SC 29202-3200
(803) 744-4444

Columbia, South Carolina
January 19, 2010

Debtor(s) Linke
Loan No.: XXXXXX9556

Resumption Date: N/A
Post-Ptn Due Date: December 1, 2009

Date Rcv'd	Payment Amt	Amount Paid	Applied To	Suspense	Suspense Running Balance	Late Charges	Advances	Comments
Jul-02-09	\$ 1,469.97	\$ 1,528.77	6/1/2009	\$ 58.80	\$ -	\$ 58.80	\$ -	Filed bky on 6/15/09
Jul-31-09	\$ 1,469.97	\$ 1,528.77	7/1/2009	\$ 58.80	\$ -	\$ 58.80	\$ -	
Sep-02-09	\$ 1,469.97	\$ 1,528.77	8/1/2009	\$ 58.80	\$ -	\$ 58.80	\$ -	
Oct-26-09	\$ 1,469.97	\$ 1,528.77	9/1/2009	\$ 58.80	\$ -	\$ 58.80	\$ -	
Nov-16-09	\$ 1,469.97	\$ 1,528.77	10/1/2009	\$ 58.80	\$ -	\$ 58.80	\$ -	
Dec-08-09	\$ 1,469.97	\$ 1,528.77	11/1/2009	\$ 58.80	\$ -	\$ 58.80	\$ -	
Date Rcv'd	Payment Amt	Amount Paid	Due Date	Suspense	Suspense Running Balance	Late Charges	Advances	Comments
	\$ 1,469.97	\$ -	12/1/2009	\$ -	\$ -	\$ 58.80	\$ -	Converted to Ch 13 on 1/5/10
	\$ 1,469.97	\$ -	1/1/2010	\$ -	\$ -	\$ 58.80	\$ -	
Outstanding Debt								\$ 3,057.54